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SUPREME COURT, U.S.

NO. 89-1862

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

DANIEL J. McCARTHY, Petitioner,

v.

ROULETTE BLAIR, Respondent.

**ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

RESPONDENT ROULETTE BLAIR'S POSITION RE: PETITIONER ATTORNEY GENERAL'S SUGGESTION OF MOOTNESS

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Attorney for Respondent
Roulette Blair

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RESPONDENT ROULETTE BLAIR'S REPLY TO RE: PETITIONER ATTORNEY GENERAL'S SUGGESTION OF MOOTNESS

Respondent Roulette Blair herewith files his response to The Petitioner's Suggestion of Mootness.

When the California Attorney General petitioned this Honorable Court for a Writ of Certiorari, it was Respondent's position that the ruling of the Ninth Circuit Court of Appeals, albeit decided on grounds other than those argued by Respondent in his appellate brief, was correctly decided and that certiorari should not be granted. Respondent, through counsel, filed an Opposition to the Grant of Writ of Certiorari. It is still Respondent's position that the Writ should not have been granted.

If the Suggestion of Mootness filed by the California Attorney General is read as a concession that Certiorari was improvidently

granted and if it is read as a request to dismiss the pending action before this Honorable Court, without more, then Respondent concurs whole heartedly.

Petitioner's Suggestion, however, appears to ask this honorable court to vacate the decision of the Ninth Circuit Court of Appeals and Respondent neither agrees with nor acquiesces in that request.

Respondent reasons as follows:

The pending civil suit Blair v. State of California [CV-90-1535-RSWL(TX)] seeks money damages for Respondent's continued incarceration on a parole hold, arising out of this case after the District Court had ruled in his favor and after the Ninth Circuit had ruled in his favor. Respondent's civil action pleads that this was a plain violation of the command of Federal Rule of Appellate Procedure 35 (C).

If this Honorable Court vacates the opinion of the Ninth Circuit, the Petitioner (here and defendant in the Civil action) will achieve sub silentio what not one Judge of the Ninth Circuit was willing to do, invalidate the published opinion of the panel which decided Blair v. McCarthy.

A dismissal of the Attorney General of California's Writ as improvidently granted, given the mootness as it applies vis-a-vis. The specific parole term complained of, which leaves the opinion of the Ninth Circuit in place appears to Respondent to be the best course of action and Respondent urges that course of action on the Court.

To vacate the opinion of the Ninth circuit without full briefing and argument on the merits, would be tantamount to a summary reversal of the decision below favoring the Respondent and would hand the Petitioner on a proverbial silver platter that which Petitioner has heretofore been unable to convince the United States District Court nor even one of the twenty-six Judges of the United States Court of appeals for the Ninth circuit is Petitioner's due.

Respectfully submitted,

Paul E. Potter
Attorney for Petitioner
Roulette Blair

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to this action. My business address is 3852 East Colorado Boulevard, Pasadena, California 91107.

On October 31, 1990 I served the foregoing document within parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Roulette Blair
E-72000
3B0G #129L
P.O. Box 3466
Corcoran, CA 93212-8310

Sandra Stanley, Esq.
2119 North Beachwood Drive
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Donald E. De Nicola
Supervising Deputy Attorney General
3580 Wilshire Boulevard
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I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Pasadena, California.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 31, 1990, at Pasadena, California.

Wendy Fan
Clerk to PAUL E. POTTER